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**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA — NORTHERN DIVISION**

In re:

HVI CAT CANYON, INC.,

Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**UBS AG, LONDON BRANCH'S OMNIBUS  
RESPONSE IN SUPPORT OF THE  
EMERGENCY MOTION FOR AN  
ORDER: (1) AUTHORIZING THE  
TRUSTEE TO OBTAIN SECURED  
FINANCING; (2) AUTHORIZING  
CONTINUED USE OF CASH  
COLLATERAL; (3) SCHEDULING A  
FINAL HEARING; AND (4) GRANTING  
RELATED RELIEF [DOCKET NO. 474]**

Hearing

Date: November 21, 2019

Time: 2:30 p.m.

Place: Courtroom 201

1415 State Street

Santa Barbara, California 93101

1 UBS AG, London Branch and UBS AG, Stamford Branch (“UBS”) respectfully submit  
2 this omnibus response to the Santa Barbara County Air Pollution Control District, County of Santa  
3 Barbara, and Harry E. Hagen, Treasurer-Tax Collectors’ Supplemental Brief [Docket No. 521]  
4 (the “Supplemental Brief”) and the Supplemental Objection of the Official Committee of  
5 Unsecured Creditors to: Emergency Motion for an Order: (1) Authorizing the Trustee to Obtain  
6 Secured Financing; (2) Authorizing Continued Use of Cash Collateral; (3) Scheduling a Final  
7 Hearing; and (4) Granting Related Relief [Docket No. 525] (the “Supplemental Objection”).

8 A final hearing should be an opportunity for parties who could not attend an interim  
9 hearing, fully develop their arguments, or present evidence to do so. It is not meant as a chance to  
10 simply reargue the same well-ventilated points and hope the Court changes its mind. Yet the  
11 Supplemental Brief filed by the Santa Barbara County Tax Assessor simply repeats arguments  
12 rejected by this Court, offers no new facts or law, and actually returns to Santa Barbara’s absurd  
13 factual position, taken at the telephonic emergency hearing, that it holds no equity cushion. This  
14 position was abandoned at the full interim hearing last Tuesday, as UBS noted at the time that  
15 Santa Barbara must. Yet Santa Barbara without explanation now returns to the same indefensible  
16 position,. UBS appreciates that Santa Barbara may disagree with findings of fact and conclusions  
17 of law, but it must do so in good faith. Continuing gamesmanship cannot be countenanced. Court  
18 time is wasted, attorney’s fees incurred meaninglessly, and critical financing orders delayed  
19 through this guerilla warfare.

20 On November 8, counsel for Santa Barbara suggested to this Court telephonically that it  
21 held no equity cushion. Counsel for UBS responded with incredulity. On a more organized  
22 presentation on November 12, faced with its own counsel’s statement that the collateral exceeded  
23 \$70 million for \$5.5 million in debt, and evidence that Santa Barbara itself had assessed the “cash  
24 value” of the property at nearly identical numbers, Santa Barbara abandoned the position it had no  
25 equity cushion. Counsel for UBS observed in argument that Santa Barbara must abandon that  
26 position, and allowed that perhaps he misapprehended Santa Barbara’s position on the phone:  
27 maybe Santa Barbara didn’t say what it did. But Santa Barbara’s supplemental brief leaves no  
28

1 question. It disinters in its Paragraph 2 the untenable position that it has no equity cushion. The  
2 Court correctly found that this position lacked merit.

3 Santa Barbara continues in Paragraph 3 to argue that “even if there were evidence of an  
4 equity cushion,” such evidence does not satisfy the requirement of adequate protection. Yet it  
5 cites no new authority, and fails to address the numerous cases cited by UBS holding that an equity  
6 cushion is, in the words of the Ninth Circuit, the “classic form” of adequate protection, Pistol v.  
7 Mellor (In re Mellor), 734 F.2d 1396, 1400 (9th Cir. 1984), and the “preferred test” in determining  
8 adequate protection for priming. In re YL W. 87th Holdings I LLC, 423 B.R. 421, 441-442 (Bankr.  
9 S.D.N.Y. 2010). In short, Santa Barbara does nothing to challenge this Court’s finding of fact that  
10 Santa Barbara is “wildly oversecured” based on the real property value of more than \$50 million  
11 (based on the tax assessment) securing its claim of approximately \$5.5 million, or its conclusion  
12 of law that such an enormous equity cushion provides adequate protection for priming.  
13 Apparently, Santa Barbara relies instead on the inability to obtain transcripts in time, and the hope  
14 that this Court and all parties will forget what happened last week.

15 Santa Barbara again protests that it chooses not to sell its tax claims, but provides no  
16 evidence this is anything more than choice. It fails to rebut the primary assertion, that California  
17 statute expressly permits Santa Barbara to sell its tax claim. Cal. Rev. & Tax. Code §§ 4511<sup>1</sup>,  
18

19  
20 <sup>1</sup> 4511. Any county may, upon the recommendation of the tax collector, and by resolution of the  
21 board of supervisors of that county adopted during the fiscal year for which it is to first apply, sell  
22 tax certificates. If the board orders the discontinuance of the procedures authorized by this part, all  
23 of the following shall occur:

- 24 (a) All of the provisions of this part, other than Section 4521, shall remain in full force and  
25 effect until all tax certificates have been canceled.  
26 (b) The county shall maintain the Tax Certificate Redemption Fund until all tax certificates  
27 have been canceled.  
28 (c) After all tax certificates have been canceled, all funds on deposit in the Tax Certificate  
Redemption Fund shall be paid to the tax collector to be applied and distributed in the same  
manner as amounts received from the collection of taxes and assessments and any costs,  
fees, penalties, or other amounts related thereto.

26 Cal. Rev. & Tax. Code § 4511 (West) (Added by Stats.1995, c. 189 (A.B.946), § 7, eff. July 24,  
27 1995. Amended by Stats.1995, c. 962 (S.B.724), § 2.).

1 4521<sup>2</sup>. If Santa Barbara chooses to run from this protection, it cannot complain to this Court that  
2 it has no protection.

3 Even more fundamentally, Santa Barbara's protest is essentially an attack on the scheme  
4 of secured credit and remedies present in any transaction. The County protests that a foreclosure  
5 sale may be inadequate to return the excess equity cushion to its tax debt. That risk is true whatever  
6 position Santa Barbara occupies. Even if it were first – and Santa Barbara simply ignores the  
7 power of the Supremacy Clause to change that priority – there is always a risk that the market will  
8 not be efficient and value might be lost. If Santa Barbara is owed \$5 million and forecloses in first  
9 position, the sale may not bring that amount. Santa Barbara may go partially or even wholly  
10 unpaid. For this reason, as noted by UBS, courts do not find a single penny of cushion adequate.

11 But where the cushion is enormous – as the Court found – some market efficiency must be  
12 anticipated. If Santa Barbara is first with a \$5 million lien and the property is worth more than  
13 \$50 million, someone will bid at Santa Barbara's sale. Even if Santa Barbara chooses not to sell  
14 its debt – which the California legislature says it may – it is protected. Similarly, if the property  
15 is subject to \$8.5 million in aggregate liens, and still worth more than \$50 million, someone will  
16 bid above the \$8.5 million. While no one suggests a perfectly efficient market (and accordingly a  
17 cushion is required beyond one dollar), the fundamental efficiency of the market underlies all  
18 secured transactions. Thus, the Supreme Court has held that this anticipation of fundamental  
19 efficiency renders a regularly conducted foreclosure sale *per se* fair value. BFP v. Resolution Tr.  
20 Corp., 511 U.S. 531, 536 (1994). The fundamental presumption of market efficiency underlies all  
21 secured transactions, whether personal or real property, whether public obligations such as taxes  
22 or private. If value is there, someone will bid to obtain it.

23  
24  
25 <sup>2</sup> 4521. Commencing no earlier than the date the property is declared in default, the tax collector  
26 may offer for sale as provided in Section 4511 tax certificates for those defaulted taxes in  
connection with that secured roll property or that property on the supplemental roll, along with  
any defaulted taxes for any previous year that have not previously been sold.

27 Cal. Rev. & Tax. Code § 4521 (West) (Added by Stats.1995, c. 189 (A.B.946), § 7, eff. July 24,  
28 1995).

1 It may be true that Santa Barbara chooses to disavow the protection the California Tax  
2 Code provides it to sell its debt. But the fundamental efficiency of markets when combined with  
3 the enormous equity cushion it enjoys – but apparently flips back and forth on admitting – provides  
4 it ample protection. It is entitled to no more.

5 Finally, Santa Barbara raises complaints on the form of order. It is noteworthy that at no  
6 time did Santa Barbara raise these in discussion or prior pleading. Certainly, exigency may limit  
7 the ability to raise concerns with the order form in advance. UBS however notes that Santa Barbara  
8 did the same at the October 8 hearing, where it requested and was readily granted drafting changes  
9 that had not been asked in advance. Responding to Santa Barbara’s specific requests:

- 10 • The form of order should be corrected to reflect that Santa Barbara did not agree to the  
11 Consensual Cash Collateral Order. This was a relic from a prior precedent.
- 12 • Santa Barbara requests removal of two sentences in Paragraph 14 requiring Huron to  
13 approve payments to Santa Barbara. That provision should remain, as initially decreed  
14 by Judge Wiles. Budgeting provides general approved categories. The review by  
15 Huron – which must be made within 48 hours – is a “quality control” matter to insure  
16 that specific payments are not only within the budget but have specific back-up. As  
17 the Court heard testimony, Huron has exercised this quality control check only four  
18 times during the case. One was an effort by the DIP to pay a two-year-old bill to Santa  
19 Barbara. As this Court observed, even with an approved budget no one should be  
20 paying prepetition bills without Court approval. A second was a duplicate payment by  
21 the DIP. While UBS assumes the Trustee will be very careful with its payments, a  
22 second set of eyes is appropriate. The proposed Order – as prior orders – provides for  
23 prompt Court resolution of any disagreement.
- 24 • Several of Santa Barbara’s requests (Paragraph 20, Paragraph 21, Paragraph 34, and  
25 Paragraph 43) seek to establish the validity, perfection and priority of the Santa Barbara  
26 tax lien. The proposed revisions are inappropriate before Santa Barbara provides  
27 evidence regarding its lien. As the Court observed with regard to cash collateral, this

1 hearing is not the appropriate time to establish the priority of and find perfected Santa  
2 Barbara's liens.

- 3 • Santa Barbara asks the Court to remove findings of its adequate protection in Paragraph  
4 19, but this is not a drafting request but a frontal assault on the Order.
- 5 • Santa Barbara requests changes to several provisions that were explicitly discussed and  
6 ordered by the Court during the November 12 interim hearing. Santa Barbara requests  
7 changes to Paragraph 31 regarding relief from stay upon default and Paragraph 34  
8 regarding UBS' right to credit bid, but both are precisely in line with this Court's  
9 rulings. Again, Santa Barbara hides an effort to reargue points it lost as comments on  
10 the order. (Lest there be any question, the Committee, which is certainly diligent on  
11 these points, signed off on the precise language).
- 12 • There is no basis for Santa Barbara's request that the Order require a representation by  
13 UBS that no Event of Default exists.
- 14 • Santa Barbara requests that Paragraph 11 of the Order require UBS to seek recovery  
15 first from non-common collateral. Given restrictions on reaching the only new  
16 collateral – avoidance claims – this request presents untenable limitations where UBS  
17 is subject to conflicting requirement where it goes first. UBS would agree to observe  
18 any requirements of marshaling under applicable law.
- 19 • Finally, Santa Barbara requests that it receive notice of defaults and requests for relief,  
20 as to which UBS agrees. However, Santa Barbara also requests that it receive copies  
21 of reports rendered to UBS. While UBS would not object, it is advised the Trustee is  
22 concerned that Freedom of Information rules might put such reports in the public realm  
23 if received by Santa Barbara. UBS must defer to the Trustee in this reasonable concern.

24 **Committee Objection**

25 The Committee's objection raises two issues: 1) a request to increase its fee allocation for  
26 the remaining one week of the advance period, and 2) an effort to surcharge UBS's collateral for  
27 accrued professional fees. UBS will address them in turn.

1 The Trustee Financing provides the estate and Trustee with funds during a five-week  
2 interim period. At the interim hearing, the Committee argued with no evidence that it needed 60  
3 days and \$50,000 to conduct its investigation. This position conflicted with the only testimony –  
4 that of the Trustee – that \$15,000 was adequate. Neither the Committee nor Trustee addressed the  
5 question of proportionality: is a “no stones left unturned” investigation appropriate when the  
6 Committee’s constituents are well “out of the money.” And each apparently assumed that UBS  
7 must provide whatever funds are needed. Nevertheless, at the Court’s urging, UBS agreed to the  
8 Committee’s time request and a \$30,000 down-payment on the requested \$50,000 for  
9 investigation. The Court also suggested that it found the \$50,000 amount reasonable and would  
10 look for that in future financing. Instead, the Committee now returns and asks for more funding  
11 without attaching that request to anything the Committee may reasonable be expected to do in the  
12 next week. Nevertheless, in an effort to resolve objection, UBS will agree to increase the  
13 Committee allocation during this period to \$70,000, of which up to \$50,000 may be used for  
14 investigation. In doing so, UBS agrees to “prepay” the full amount the Committee suggested was  
15 needed for investigation. Of course, the Committee’s complaint it will have nothing for other  
16 activities through Thanksgiving is entirely in its own control; nothing requires it to use \$50,000  
17 for investigation during this period. It has shown nothing it should reasonably anticipate (even  
18 assuming its statement is correct that it has used up the \$20,000 allocation in contesting financing).  
19 But the Committee should not anticipate it will be allowed to “double dip” for investigation costs  
20 if the inevitable further financing matures. UBS is willing to fund the entire investigation budget  
21 the Committee requested, having already given the time the Committee asked. Having agreed to  
22 the Committee’s request to fund the full \$50,000 investigation budget, UBS understands that no  
23 additional funds will be made available in the future for this purpose.

24 The Committee’s second request, that UBS agree to surcharge of its prepetition collateral  
25 to pay accrued professional fees of the DIP and Committee, is not agreeable. In its suggested  
26 mechanism, the Committee proposes that, after repayment of the Trustee Facility, five percent  
27 (5%) of every dollar that becomes distributable from the estate should be set aside for chapter 11  
28

1 administrative expenses accrued prior to the appointment of the Trustee. This is nothing more  
2 than a request to surcharge collateral without the label or any justification at law. In each of the  
3 Circuits this case has pended, the law is well-established that a secured creditor's collateral cannot  
4 be surcharged for estate professional fees simply because the general administration of the case  
5 benefits the secured creditor. In re Grimland, Inc., 243 F.3d 228, 232–33 (5th Cir. 2001); In re  
6 Debbie Reynolds Hotel & Casino, Inc., 255 F.3d 1061, 1068 (9th Cir. 2001); In re Flagstaff  
7 Foodservice Corp., 739 F.2d 73, 76–77 (2d Cir. 1984). As the Court noted in ruling at the cash  
8 collateral trial, surcharge demands a primary, direct and quantifiable benefit to the lender. The  
9 fees of DIP counsel and the Committee counsel, which in large part were incurred in fighting with  
10 UBS, can in no Orwellian world be called primarily for the benefit of UBS. Even the actions of  
11 the Committee that were helpful to UBS – such as supporting venue motions and while contesting  
12 use of cash collateral and supporting an earlier effort to surcharge UBS's collateral, at least  
13 acknowledging that management must go – cannot be said to be primarily for UBS's benefit. UBS  
14 would not impugn either counsel by submitting they acted primarily for UBS's benefit in violation  
15 of their ethical duties.

16 The role of Committee counsel in a case such as this is complex. UBS was of course the  
17 only creditor to actually support retention of Committee professionals. But everyone agrees they  
18 cannot “run amuck.” As UBS noted at the interim hearing, a recent article in the ABI Journal by  
19 the Chief Bankruptcy Judge in Delaware and Professor Grohsgal moderates the suggestion of the  
20 ABI Commission that committees be simply eliminated where unsecureds are “out of the money,”  
21 by suggesting a requirement to prove benefit to the reorganization and provisional elimination of  
22 the Committee. Hon. Christopher S. Sontchi & Prof. Bruce Grohsgal, Should the Appointment of  
23 an Unsecured Creditors' Committee Be Made Optional in Chapter 11?, 38-NOV Am. Bankr. Inst.  
24 J. 12, 75 (Nov. 2019). Of course, that is not established law. DIP counsel and counsel for the  
25 Committee may have allowable claims. If so, they would have administrative status and will be  
26 addressed in the future. The rights of such creditors are well-established. While UBS is prepared  
27 to “prepay” the investigation costs of the Committee, it is not prepared to agree at this time for the  
28



1 DIP and Committee counsel to surcharge its collateral. No authority is cited for the suggestion  
2 that its post-petition financing must allow surcharge of its collateral for any administrative claim  
3 that may be allowed. Treatment of the accrued claims by counsel who to paraphrase the Second  
4 Circuit's words in *Flagstaff* chose to get into this mess, need not be resolved today. For the Court's  
5 convenience, a redline of the existing Second Interim Order – revised to reflect a final order and  
6 changes UBS indicates it is prepared to make – is attached as Exhibit A.

7  
8 For the reasons set forth, this Court should overrule the objections of Santa Barbara and  
9 the Committee and grant final approval to the Trustee's financing motion.

10  
11 Dated: November 20, 2019

Respectfully submitted,

12 O'MELVENY & MYERS LLP

13  
14 /s/ Darren L. Patrick

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19 *UBS AG, Stamford Branch*

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of eighteen and not a party to this bankruptcy case or adversary proceeding. My business address is **400 South Hope Street, Los Angeles, California 90071-2899**.

A true and correct copy of the foregoing document entitled **UBS AG, LONDON BRANCH'S OMNIBUS RESPONSE IN SUPPORT OF THE EMERGENCY MOTION FOR AN ORDER: (1) AUTHORIZING THE TRUSTEE TO OBTAIN SECURED FINANCING; (2) AUTHORIZING CONTINUED USE OF CASH COLLATERAL; (3) SCHEDULING A FINAL HEARING; AND (4) GRANTING RELATED RELIEF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):**

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **11/20/2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

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3  
4 **III. SERVED BY PERSONAL DELIVERY:**

5 Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **11/20/2019** I served the following  
6 person(s) and/or entity(ies) by personal delivery, overnight mail service, or (for those who  
7 consented in writing to such service method), by facsimile transmission and/or email as  
follows. Listing the judge here constitutes a declaration that personal delivery on the judge  
will be completed no later than 24 hours after the document is filed.

8 **JUDGE:**

9 Hon. Martin R. Barash  
10 United States Bankruptcy Court  
11 Central District of California  
21041 Burbank Boulevard, Suite 342  
12 Courtroom 303  
Woodland Hills, 91367

13 I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

14 Executed this 20<sup>th</sup> day of November, 2019, at Los Angeles, California.

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16  
17 /s/ Darren L. Patrick  
Darren L. Patrick  
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EXHIBIT A

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7 *Proposed Attorneys for Michael A. McConnell,*  
8 *Chapter 11 Trustee*

9  
10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **NORTHERN DIVISION**  
13

14 In re:

15 HVI CAT CANYON, INC.,  
16 Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**~~SECOND-INTERIM~~FINAL ORDER FOR  
EMERGENCY PRIMING AND  
SUPERPRIORITY FINANCING AND  
17 CONSENSUAL USE OF CASH  
18 COLLATERAL BY THE CHAPTER 11  
19 TRUSTEE**

Hearing

20 Date: November 21, 2019

21 Time: 2:30 p.m.

22 Place: Courtroom 201

1415 State Street

Santa Barbara, California

24 This ~~Second-Interim~~Final Order for Emergency Priming and Superpriority Financing and  
25 Consensual Use of Cash Collateral by the Chapter 11 Trustee (this "Final Order") is entered as of  
26 November 12[21], 2019, with respect of the following facts:  
27  
28

1 On October 4, 2019 the Court denied the *Debtor's Motion for Interim and Final Orders*  
2 *Pursuant to 11 U.S.C. §§ 105, 361, 362 and 363 Approving Use of Cash Collateral, Providing*  
3 *Adequate Protection and Setting Final Hearing Pursuant to Bankruptcy Rule 4001*[ECF No. 11]  
4 (the "Cash Collateral Motion") and the *Motion of the Debtor to Surcharge Collateral Pursuant to*  
5 *11 U.S.C. §§ 506(c) and 552(b)* [ECF No. 55] (the "Surcharge Motion").

6  
7 On October 8, 2019, the Court entered an *Agreed Order for Consensual Use of Cash*  
8 *Collateral* [ECF No. 375] (the "Consensual Cash Collateral Order"), whereby UBS AG, London  
9 Branch ("UBS AG, London Branch"), the debtor and debtor in possession (the "Debtor"), the  
10 Official Committee of Unsecured Creditors (the "Committee"), and GIT, Inc. ("GIT"), ~~and Harry~~  
11 ~~E. Hagen, as Treasurer Tax Collector of the County of Santa Barbara, California~~ ("Santa  
12 Barbara"), in anticipation of a hearing on motions seeking appointment of a Chapter 11 trustee,  
13 agreed to use of cash collateral (as that phrase is defined in Section 363(a) of the Bankruptcy  
14 Code, "Cash Collateral") for an interim period ending October 25, 2019. On October 16, 2019,  
15 the Court entered the *Agreed Order Granting Motion for Appointment of a Chapter 11 Trustee*  
16 [ECF No. 409] and approved appointment of Michael McConnell as the Chapter 11 trustee in this  
17 case (the "Trustee") on October 22, 2019 [ECF No. 431].

18  
19 Shortly before authority for use of Cash Collateral expired under the Consensual Cash  
20 Collateral Order, the Trustee and UBS AG, London Branch learned that the Debtor does not have  
21 sufficient cash to fund payroll and other operating expenses scheduled for payment. To address  
22 the immediate cash need, on October 24, 2019, the Trustee filed his *Notice of Motion and*  
23 *Trustee's Emergency Motion for (1) Authority to Accept a Partial Prepayment of the Amount*  
24 *Owed by California Asphalt Production, Inc. to the Estate, or in the Alternative for Authority to*  
25 *Obtain "Credit" in the Form of Such Prepayment, and (2) Waiver of any Stay Imposed by FRBP*  
26 *6004(h); and Memorandum of Points and Authorities, Declaration of Tim Skillman, and Request*  
27

1 *for Judicial Notice in Support Thereof* [ECF No. 439] (the “Emergency Motion”). Following the  
2 October 25, 2019 emergency hearing, the Court entered the *Order Granting Trustee’s Emergency*  
3 *Motion for (1) Authority to Accept a Partial Prepayment of the Amount Owed by California*  
4 *Asphalt Production, Inc. to the Estate, or in the Alternative for Authority to Obtain “Credit” in*  
5 *the Form of Such Prepayment, and (2) Waiver of any Stay Imposed by FRBP 6004(h)* [ECF No.  
6 449], granting authorizing the Trustee to accept a partial prepayment from California Asphalt  
7 Production, Inc. (“CAP”).

9 On November 7, 2019, the Trustee filed his *Emergency Motion for an Order: (1)*  
10 *Authorizing the Trustee to Obtain Secured Priming Superpriority Financing; (2)*  
11 ~~authorizing~~Authorizing *The Continued Use of Cash Collateral; (3) Scheduling a Final Hearing;*  
12 *and (4) Granting Related Relief* [ECF No. 474] (the “Motion”) for authorization to obtain post-  
13 petition financing from UBS AG, Stamford Branch (“UBS AG, Stamford Branch” and together  
14 with UBS AG, London Branch, “UBS”) and continue to use the Cash Collateral of UBS AG,  
15 London Branch.

17 On November 8, 2019, the Court conducted an initial interim hearing on the Motion and  
18 entered the *Interim Order on Trustee’s Emergency Motion for an Order: (1) Authorizing the*  
19 *Trustee to Obtain Secured Priming Superpriority Financing; (2) Authorizing Continued Use of*  
20 *Cash Collateral; (3) ~~Schedule~~Scheduling a Final Hearing; and (4) Granting Related Relief* [ECF  
21 No. 480] (the “Interim Order”), authorizing up to \$267,317 borrowings through a further interim  
22 hearing on November 12, 2019.

24 On November 12, 2019, the Court conducted the further interim hearing and authorized  
25 post-petition financing on ~~the terms set forth herein~~an interim basis. On November 18, 2019, the  
26 Court entered the Second Interim Order on Trustee’s Emergency Motion for an Order: (1)  
27 Authorizing the Trustee to Obtain Secured Priming Superpriority Financing; (2) Authorizing



Continued Use of Cash Collateral; (3) Scheduling a Final Hearing; and (4) Granting Related Relief [ECF No. 524] (the “Second Interim Order”).

Based upon the Motion, and the financing pursuant to the credit agreement attached to the Motion and the Trustee’s use of Cash Collateral, such use being found necessary to avoid immediate and serious harm to the estate and potential harm to the public health and safety as contemplated by Bankruptcy Rule 4001(b) and (c), a final hearing to consider approval of the Motion having been held on November ~~8, 2019 and November 12~~21, 2019 (the “Final Hearing”), notice and opportunity for hearing being sufficient under the circumstances, and upon the findings of fact and conclusions of law made by the Court at the interim hearings and the Final Hearing, all of which are incorporated herein by reference, and good cause appearing therefor,

**IT IS HEREBY FOUND AND ORDERED AS FOLLOWS:**

1. Motion Granted. The Motion is granted on a final basis and the Facility (as defined below) and the Credit Agreement attached as Exhibit 3 to the Trustee’s Declaration (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) are approved. Any objection to the Motion with respect to entry of this Final Order that have not been withdrawn, waived or settled, and any reservation of rights included therein, are hereby denied and overruled. Except as specifically amended, supplemented, or otherwise modified by this Final Order, all provisions of the Second Interim Order remain in full force and effect and are hereby ratified by this Final Order and incorporated herein by reference as though set forth fully below.

2. Jurisdiction and Venue. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief granted herein are section 364 of the Bankruptcy Code and

1 Bankruptcy Rule 4001(c). Venue of this Chapter 11 proceeding and the Motion is proper in this  
2 district pursuant to 28 U.S.C. § 1408 and 1409.

3 3. Hearing Held; Notice. The Hearing was held pursuant to Bankruptcy Rules  
4 4001(c)(2). Notice of the [Final](#) Hearing and the relief requested in the Motion was given as set  
5 forth in the proof of service filed by the Trustee.

6 4. No Credit Available on More Favorable Terms. The Trustee, on behalf of the  
7 Debtor and the Debtor's estate, is unable to find sufficient financing from sources other than UBS  
8 AG, Stamford Branch on terms more favorable than the terms for the term loan facility (the  
9 "Facility") described in the Credit Agreement.

10 5. Need for Post-Petition Financing and Use of Cash Collateral. ~~Immediate~~[This](#)  
11 financing is critical for the Debtor to continue its operations in the ordinary course. The Facility,  
12 the Trustee's entry into the Credit Agreement, and related relief is necessary to avoid immediate  
13 and irreparable harm to the Debtor's estate, its employees, and all parties-in-interest. The Facility  
14 is the best source of financing available to the Debtor under the circumstances and was entered  
15 into in good faith and at arm's-length.

16 6. Protective Advances. The advances under the Facility shall constitute advances to  
17 protect and preserve the collateral under that certain First Lien Credit Agreement dated as of May  
18 20, 2016 and that certain Second Lien Credit Agreement dated as of May 20, 2016 among the  
19 Debtor, Rincon Island Limited Partnership, GOGH, LLC and UBS AG, London Branch  
20 (collectively, the "Prepetition Credit Agreements") and the obligations arising thereunder the  
21 "Prepetition Obligations") and shall remain subject to any guarantee provided thereunder. For the  
22 avoidance of doubt, all proceeds of the Facility shall constitute Cash Collateral.

23 7. Authorization for Emergency Financing. The Trustee is authorized [on a final basis](#)  
24 to borrow, and UBS AG, Stamford Branch is authorized to advance, up to \$3 million in financing  
25

1 ~~on an interim basis prior to the final hearing set forth below~~, under the Credit Agreement, subject  
2 to the terms of this [Final](#) Order, and in accordance with the budget attached hereto as Exhibit 1  
3 (including all terms and conditions set forth therein and as may be updated from time to time in  
4 accordance with the Credit Agreement, the “Budget”), subject to a line-item variance of ten  
5 percent (10%) of the expenses set forth in the Budget tested on a cumulative basis by  
6 disbursement categories contained in the Budget (the “Permitted Variance”). The Trustee and  
7 UBS AG, Stamford Branch are authorized to extend the availability period under the Credit  
8 Agreement by up to two weeks and increase the amount of financing by an aggregate amount of  
9 up to \$500,000 upon mutual agreement of the Trustee and UBS AG, Stamford Branch without  
10 further order of this Court. All advances provided by UBS AG, Stamford Branch under the  
11 Facility, including [but not limited to](#) the \$197,516 advanced by UBS AG, Stamford Branch on an  
12 emergency basis pursuant to the Interim Order [and the \[\\$\\_\\_\\_\\_\\_\] advanced by UBS AG, Stamford](#)  
13 [Branch pursuant to the Second Interim Order](#), shall be subject to the terms of this [Final](#) Order.  
14 Immediately upon entry of this [Final](#) Order, the Trustee shall, and is hereby authorized [on a final](#)  
15 [basis](#) to, execute and deliver to UBS AG, Stamford Branch the Credit Agreement and all other  
16 loan documents required to be executed and delivered under the Facility. The Trustee and  
17 counsel acting on behalf of the Trustee are further authorized to take any such actions that may be  
18 necessary to implement the Facility and borrow funds under the Credit Agreement as approved in  
19 this [Final](#) Order, including without limitation to issue, execute and deliver any such certificates,  
20 borrowing requests or other documents and directions that may be requested by UBS AG,  
21 Stamford Branch. Nothing in this [Final](#) Order shall create any obligation of UBS to advance or  
22 lend any money to the Trustee or the Debtor, and any such advances or loans shall be made by  
23 UBS AG, Stamford Branch only in accordance with the terms and conditions of the Credit  
24 Agreement and this [Final](#) Order. Any funds advanced or loaned by UBS AG, Stamford Branch

1 shall constitute a bona fide extension of credit to a non-affiliated borrower for purposes of the  
2 secured creditor exemption under the Comprehensive Environmental Response, Compensation  
3 Liability Act and comparable federal, state and local law. UBS AG, Stamford Branch shall not be  
4 deemed an operator or owner of the Debtor or any of its properties or incur any environmental or  
5 similar liabilities, including but not limited to, liability for environmental compliance,  
6 remediation, restoration or natural resource damages under any federal, state or local law solely  
7 as a result of providing funding, credit or advances to the Trustee.  
8

9 8. Based on the record before this Court, it appears (and the Trustee on behalf of the  
10 Debtor has stipulated) that the terms of the Facility, the Credit Agreement and this [Final](#) Order are  
11 fair and reasonable and are supported by reasonably equivalent value and fair consideration. The  
12 Court further finds that the Trustee's agreement to the terms of the Facility and Credit Agreement  
13 on behalf of the Debtor is a sound exercise of business judgment and should be approved as set  
14 forth herein.  
15

16 9. Amendment of the Credit Agreement. Following entry of this [Final](#) Order, the  
17 Trustee is authorized to enter into any non-material amendment or modification to the Credit  
18 Agreement and the loan documents entered into in connection therewith without further order of  
19 this Court, ~~provided that the~~ [The](#) Trustee ~~provides~~ [shall promptly provide](#) notice of any such  
20 amendment or modification to the Court, the United States Trustee, the Committee and [Harry E.](#)  
21 [Hagen, as Treasurer Tax Collector of the County of Santa Barbara, California \("Santa Barbara"\)](#).  
22 To the extent that such modification or amendment is material, such material modification or  
23 amendment shall only be permitted pursuant to an order of this Court on notice pursuant to Local  
24 Rule 2002-1(b) and a hearing. Except as otherwise provided herein, no waiver, modification, or  
25 amendment of any of the provisions of the Credit Agreement shall be effective unless set forth in  
26 writing, signed by the Trustee and UBS AG, Stamford Branch. For the avoidance of doubt, an  
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1 amendment of the availability period of the Facility by up to two weeks and an increase of the  
2 amount of the Facility by up to \$500,000 in accordance with paragraph 7 of this [Final](#) Order shall  
3 not constitute a material amendment. Notwithstanding anything to the contrary in the Credit  
4 Agreement, UBS's prior consent to file a Chapter 11 plan is only required if the proposed Chapter  
5 11 plan does not provide for payment of the Obligations in full in cash on the effective date.

6  
7 10. Use of Funds. The Trustee may use funds advanced under the Facility, on the  
8 terms and conditions set forth herein and in the Credit Agreement, *provided that* all such funds  
9 are used to pay approved operating expenses solely in accordance with the Budget (including all  
10 terms and conditions set forth therein). The Trustee is authorized to use funds advanced under the  
11 Facility to pay, or to fund a segregated account to pay, the reasonable fees and expenses for the  
12 Trustee's professionals and the Committee's professionals, only to the extent such fees and  
13 expenses for the Trustee's professional and the Committee's professionals are included in the  
14 Budget and accrued prior to an Event of Default. The provisions for escrowing of funds shall  
15 differ for the Trustee's professionals and for the Committee professionals, each of whom agrees  
16 to such difference. The Budget amount for the Committee professionals shall be ~~\$50,000~~[70,000](#)  
17 [for the five-week period \(which includes the total Investigation Budget \(as defined below\)\)](#) and  
18 shall be requested promptly by the Trustee and escrowed immediately upon receipt. Accordingly,  
19 once such funds are escrowed, the Committee professionals shall not enjoy the benefits of the  
20 Carve-Out set forth in paragraph 16 of this [Final](#) Order. The liens of UBS and GLR are  
21 subordinated in such escrow funds to the extent professional fees and expenses are awarded to the  
22 professionals. With regard to the Trustee's professionals, in addition to the escrowed fund, they  
23 shall enjoy the benefit of the Carve-Out set forth in paragraph 16 of this [Final](#) Order. For the  
24 avoidance of doubt, the funds advanced under the Facility shall not be used for payment of any  
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1 expense not specifically included and/or not approved for payment under the Budget or otherwise  
2 authorized by this [Final](#) Order.

3 11. Liens, Collateral and Obligations. Without limiting the approval set forth above,  
4 the Court grants as follows:

5 (i) Pursuant to section 364(c) and 364(d) of the Bankruptcy Code, UBS AG, Stamford  
6 Branch is granted valid and perfected first priority priming and senior security  
7 interests and liens (the “Financing Liens”) in all property of the estate of the  
8 Debtor, including, but not limited to all of the Debtor’s rights in tangible and  
9 intangible assets, including without limitation, all prepetition and post-petition  
10 assets of the Debtor’s estate, whether existing on or as of the Petition Date or  
11 thereafter acquired, including without limitation, the Debtor’s interest in oil and  
12 gas properties (and as-extracted collateral, goods, fixtures and hydrocarbons  
13 relating thereto), wells, accounts receivable, other rights to payment, any right to  
14 receive any residual of any retainer provided to any professionals after payment of  
15 such professional’s allowed fees and expenses, cash, inventory, general  
16 intangibles, contracts, servicing rights, swap and hedge proceeds and termination  
17 payments, servicing receivables, securities, chattel paper, owned real estate, real  
18 property leaseholds, fixtures, machinery, equipment, deposit accounts, patents,  
19 copyrights, trademarks, trade names, rights under license agreements and other  
20 intellectual property, claims and causes of action (including those arising under  
21 sections 510 or 542 through 553 of the Bankruptcy Code, except as noted below),  
22 commercial tort claims, and the proceeds of all of the foregoing (the “Collateral”) or  
23 proceeds thereof. The Financing Liens granted to UBS AG, Stamford Branch  
are valid, perfected and enforceable first priority priming and senior liens on all  
the Collateral that are superior to all other prepetition or post-petition liens, claims  
or security interests in favor of any other lienholder, other than the Carve-Out (as  
defined below). Notwithstanding anything to the contrary herein, the Financing  
Liens granted herein shall not attach to (a) avoidance claims of the estate against  
any party other than the Debtor’s current and former insiders and affiliates or (b)  
the proceeds thereof. The Financing Lien shall only secure the Obligations (as  
defined below). UBS agrees, for the benefit of the Trustee and the Committee,  
that it will not look to recover from avoidance claims or proceeds without first  
making a reasonable good faith effort to collect from Prepetition Collateral (as  
defined below) to satisfy the Obligations. [UBS agrees to observe any  
requirements of marshaling under applicable law.](#)

24 (ii) The Financing Liens against the assets of the Debtor and the Collateral shall be,  
25 and hereby are, confirmed, and extend to and secure all obligations and  
26 indebtedness of the Trustee on behalf of the Debtor and the Debtor’s estate to UBS  
27 AG, Stamford Branch under the Facility and the Credit Agreement (the  
28 “Obligations”). The Financing Liens shall be, and are hereby determined to be,  
first priority priming and senior liens that are superior to all other liens, claims or  
security interests, pre- or post-petition, other than the Carve-Out (as defined

below), except as specifically set forth in this [Final](#) Order. This [Final](#) Order shall be deemed to grant and perfect, and be sufficient and conclusive evidence of the validity, perfection and priority of the Financing Liens. UBS AG, Stamford Branch may, but shall not be required, to file or record financing statements, mortgages, notices of lien, or similar instruments in any jurisdiction or take any other action in order to validate and perfect the Financing Liens granted to them pursuant to this [Final](#) Order, and the stay imposed under section 362 of the Bankruptcy Code is hereby modified solely to permit the same. If UBS AG, Stamford Branch shall, in its sole discretion, choose to file such financing statements, mortgages, notices of lien or similar instruments or otherwise confirm perfection of and the Financing Liens, the Financing Liens granted herein shall be deemed perfected at the time and on the date of entry of this [Final](#) Order. Upon request by UBS AG, Stamford Branch, the Trustee is authorized, without the further consent of any party, to take any actions and to execute and deliver such instruments as may be necessary to enable UBS AG, Stamford Branch to further perfect, preserve and enforce the Financing Liens granted to UBS AG, Stamford Branch by this [Final](#) Order.

- (iii) For all Obligations, UBS AG, Stamford Branch is granted an allowed superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code (the “[Financing Superpriority Claim](#)”) having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Trustee on behalf of the Debtor and/or the Debtor, whether now in existence or incurred by the Trustee on behalf of the Debtor and/or the Debtor after the Petition Date, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 503(b), 507(a), 364(c)(1), 564(c), or 726 of the Bankruptcy Code, other than the Carve-Out (as defined below). Notwithstanding anything to the contrary herein, the Financing Superpriority Claim granted herein shall not be payable from (a) avoidance claims of the estate against any party other than the Debtor’s current and former insiders and affiliates or (b) the proceeds thereof. UBS agrees, for the benefit of the Trustee and the Committee, that it will not look to recover from avoidance claims or proceeds without first making a reasonable good faith effort to collect from Prepetition Collateral (as defined below) to satisfy the Obligations. [UBS agrees to observe any requirements of marshaling under applicable law.](#)

12. [Use of Cash Collateral.](#) The Trustee may use Cash Collateral, on the terms and conditions set forth herein solely in accordance with the Budget until the date that is the earliest of (a) November 29, 2019, (b) the occurrence of an Event of Default (as defined in the Credit Agreement), and (c) the breach or failure of the Trustee or the Debtor to comply with the terms of this [Final](#) Order (the date of the occurrence of the earliest of (a), (b) and (c), the “[Termination Date](#)”). To the extent the Debtor holds an interest, all funds and cash investments of Debtor,



1 including any funds on deposit at any banks or other institutions as of the Petition Date, are Cash  
2 Collateral of UBS AG, London Branch within the meaning of 11 U.S.C. § 363(a). In addition, all  
3 cash proceeds of the Prepetition Collateral (as defined below) (and investments thereof) received  
4 by the Debtor, the Trustee, or the estate of the Debtor after the Petition Date are Cash Collateral  
5 of UBS AG, London Branch within the meaning of 11 U.S.C. § 363(a). The Trustee shall not use  
6 any Cash Collateral except as permitted herein or as otherwise approved by this Court.  
7

8 13. Compliance with the Budget. Except as otherwise set forth herein, the Trustee is  
9 hereby authorized to use all Cash Collateral until the Termination Date to pay the ordinary course  
10 operating expenses of Debtor's estate solely in accordance with the Budget (including all terms  
11 and conditions set forth therein), subject to the Permitted Variance.

12 14. Limitations on Use of Proceeds and Cash Collateral. The Trustee shall notify  
13 Huron Consulting Group ("Huron"), via email to both mkehl@huronconsultinggroup.com and  
14 azughayer@huronconsultinggroup.com, of any payments that exceed \$7,500 not less than 36  
15 hours prior to initiating such payment (a "Proposed Payment"). If Huron does not object to the  
16 Proposed Payment within 36 hours by email to the Trustee at michael.mcconnell@kellyhart.com,  
17 the Trustee may proceed to make such payment. Should Huron object to the Proposed Payment,  
18 such payment shall not be made without further ~~Order~~order of the Court. The Trustee and UBS  
19 consent to judicial intervention on an expedited basis to determine whether such Proposed  
20 Payment may proceed. Any payments to be made under the Budget to Santa Barbara,  
21 departments or agencies of the County of Santa Barbara, and the Santa Barbara County Air  
22 Pollution Control District (the "APCD") must be approved by Huron. If approved, such  
23 payments shall be made timely in accordance with the Budget. For the avoidance of doubt, no  
24 payments shall be made to GIT pursuant to this Final Order for prepetition work or claims other  
25 than reimbursement with regard to the Debtor's employees. None of the Cash Collateral or the  
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1 proceeds of the Facility, subject only to the Investigation Budget (as defined below), shall be used  
2 (i) to challenge UBS's claims and/or liens or (ii) to prevent or hinder UBS from exercising its  
3 rights or remedies.

4 15. Absent further order of the Court or written consent of UBS for payments  
5 specifically designated as a royalty payment or surface lease payment to an insider or affiliate,  
6 neither Debtor nor the Trustee shall make the following payments: (i) any royalty payments or  
7 surface lease payments to insiders or affiliates of the Debtor or (ii) any payment of professional  
8 fees for the Debtor or any committee, but the Trustee shall hold any such payments provided for  
9 in the Budget in an interest-bearing escrow or segregated account. All such issues are expressly  
10 reserved for future determination. The Budget includes certain items for accounting purposes  
11 only; this [Final](#) Order does not permit payment of these items. Notwithstanding anything to the  
12 contrary, the proceeds of the Facility and Cash Collateral shall only be used to pay those items in  
13 the Budget that have been specifically approved by UBS [or Huron](#) and to escrow payments as set  
14 forth above. For the avoidance of doubt, neither [the](#) Debtor nor the Trustee has any authority to  
15 make any (i) insider or affiliate royalty payments; (ii) insider or affiliate surface lease payments;  
16 (iii) professional fee payments, except payments authorized for the Trustee's professionals [or](#)  
17 [Committee's professionals](#) under this [Final](#) Order; or (iv) other payments which are listed below  
18 the line in the Budget for accounting purposes but not authorized by this [Final](#) Order, regardless  
19 of whether any such payments listed in (i)-(iv) are included in the Budget.

20 16. Carve-Out. There shall be a subordination of the Financing Liens and Financing  
21 Superpriority Claim granted to UBS AG, Stamford Branch on the Collateral, and the Adequate  
22 Protection Liens (as defined below) granted to UBS AG, London Branch on the Post-Petition  
23 Collateral and GLR on the Prepetition Collateral, and Adequate Protection Superpriority Claim  
24 (as defined below) granted to UBS AG, London Branch on the Post-Petition Collateral for the

1 aggregate amount of reasonable professional fees and expenses for the Trustee's professionals,  
2 provided that such amount for the Trustee's professionals shall not exceed 25% of the amounts  
3 set forth in the Budget and accrued prior to occurrence of an Event of Default (the "Carve-Out").  
4 If, for any reason, any portion of the sum of ~~\$50,000~~70,000 budgeted for the Committee's  
5 professionals (\$50,000 of which is for the Committee's Investigation Budget (as defined below))  
6 is not funded to an escrowed account by the Trustee pursuant to paragraph 10 hereof, then such  
7 amount shall also constitute a part of the Carve-Out. Notwithstanding the foregoing, following  
8 the occurrence of an Event of Default, the Carve-Out shall include any withheld portion of the  
9 fees and expenses for the Trustee's professionals accrued prior to such date and set forth in the  
10 Budget, and an additional amount not exceed \$15,000 in the aggregate from and after a written  
11 notice of default. It is the intention of this Final Order that the combination of the escrowed  
12 amounts under paragraph 10 plus the Carve-Out equals 100% of the Budgeted fees and expenses  
13 for the Committee's professionals and 125% of the Budgeted fees and expenses for the Trustee's  
14 professionals accrued prior to an Event of Default plus the \$15,000 provided in the prior sentence  
15 after a written notice of default, if applicable. All such professionals having consented to the  
16 differential mechanics. Nothing in this Final Order shall be construed to impair the ability of  
17 UBS to object to any fees, expenses, reimbursements, or compensation sought by the Trustee.  
18 The Carve-Out shall not be used to investigate or commence or continue any action or proceeding  
19 against UBS, subject only to the Investigation Budget (as defined below).

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23 17. Reporting Requirements. As a condition to use funds advanced under the Facility  
24 and Cash Collateral, the Trustee shall provide to UBS and the Committee a variance report  
25 reasonably acceptable to UBS on a weekly basis during the period for which use of such funds  
26 and Cash Collateral is permitted under this Final Order and any subsequent order, which shall be  
27 delivered by the Wednesday of the following week. Reporting of monthly sales revenue shall be

1 no later than 5 business days following the end of the month. In addition, the Trustee and its  
2 representatives and agents shall provide to UBS and the Committee weekly reports, oral and/or  
3 written, regarding the status of operations and financial matters as well as any additional  
4 information reasonably requested by UBS.

5 18. Additional Covenants.

- 6
- 7 (i) No later than November 18, 2019, the Trustee shall file an application in form and  
8 substance reasonably acceptable to UBS to retain persons acceptable to UBS on  
9 terms acceptable to UBS to provide a reserve report regarding the Debtor's  
10 hydrocarbon assets.
- 11 (ii) No later than November 18, 2019, the Trustee shall file an application in form and  
12 substance reasonably acceptable to UBS to retain persons acceptable to UBS on  
13 terms acceptable to UBS to conduct a Phase I environmental study regarding the  
14 Debtor's hydrocarbon assets and operations.
- 15 (iii) On or before November 18, 2019, the Trustee shall provide one or more reports to  
16 UBS as to the Trustee's efforts to stabilize and improve Debtor's operations and  
17 revenues, including efforts to maximize sale revenues for the benefit of the estate.
- 18 (iv) No later than November 18, 2019, the Trustee shall provide UBS with a 13-week  
19 cash flow budget in form and substance reasonably acceptable to UBS.
- 20 (v) The Debtor shall obtain and collect a minimum monthly sales revenue of  
21 \$750,000, measured as of the last day of each month.

22 19. Adequate Protection. UBS AG, London Branch is entitled, pursuant to 11 U.S.C.  
23 §§ 361 and 363(e), to adequate protection from any diminution in value of its interests in the  
24 collateral securing the Prepetition Obligations, including the Cash Collateral (collectively, the  
25 "Prepetition Collateral"), including, without limitation, any such diminution resulting from use by  
26 Debtor or the Trustee of Cash Collateral and any other collateral, and the imposition of the  
27 automatic stay pursuant to 11 U.S.C. § 362 (such diminution in value the "Adequate Protection  
28 Obligations"). Based on the Court's prior findings regarding the value of Prepetition Collateral in  
connection with the Cash Collateral hearings, Santa Barbara is adequately protected for priming  
and use of Cash Collateral under this [Final](#) Order.

20. Adequate Protection – Replacement and Additional Liens. As partial adequate protection for the Adequate Protection Obligations, effective upon the commencement of this case and without the necessity of the execution by Debtor, the Trustee or UBS AG, London Branch of any mortgages, security agreements, pledge agreements, financing statements or otherwise, the following additional and replacement security interests and liens are hereby granted to UBS AG, London Branch (the “Senior Adequate Protection Liens”), subject only to (i) liens on the Collateral in favor of UBS AG, Stamford Branch to secure the Obligations, (ii) valid and perfected non-voidable liens in existence on the Petition Date that are senior in priority to the liens securing the prepetition claims of UBS AG, London Branch and (iii) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by 11 U.S.C. § 546(b) that are senior in priority to the liens securing the prepetition claims of UBS AG, London Branch ((i), (ii), and (iii) collectively, the “Permitted Liens”): (a) to the full extent of any diminution in value of the Prepetition Collateral, a perfected first priority senior security interest in and lien upon all cash of Debtor and any investment of the funds of Debtor, whether existing on the Petition Date or thereafter acquired as of the date hereof and as of the Petition Date; and (b) to the full extent of any diminution in value of the Prepetition Collateral, a perfected first priority senior security interest in and lien upon all other pre- and post-petition property of Debtor, whether existing on the Petition Date or thereafter acquired, including, without limitation, all accounts, cash, Cash Collateral, deposit accounts, chattel paper, instruments, documents, investment property, supporting obligations, customer lists, letter of credit rights, inventory, fixtures, equipment, general intangibles, goods, patents, copyrights and trademarks as well as all products and proceeds of any of the foregoing and books and records relating to any of the foregoing and to Debtor’s business and the proceeds of all of the foregoing (collectively, the “Post-Petition Collateral”). For the avoidance of doubt, in accordance with paragraph 24 of this

1 [Final](#) Order, the Senior Adequate Protection Liens granted herein shall not attach to avoidance  
2 claims of the estate or proceeds thereof. The Senior Adequate Protection Liens shall be junior  
3 only to the Permitted Liens and the Carve-Out.

4 21. GLR, LLC (“[GLR](#)”) shall be entitled to, as adequate protection for its interest in  
5 Prepetition Collateral, effective upon the appointment of the Trustee and without the necessity of  
6 the execution by Debtor, the Trustee or GLR of any mortgages, security agreements, pledge  
7 agreements, financing statements or otherwise, the following additional and replacement security  
8 interests and liens which are hereby granted to GLR (the “[Junior Adequate Protection Liens](#)” and  
9 together with the Senior Adequate Protection Liens, the “[Adequate Protection Liens](#)”), subject  
10 only to the Permitted Liens to the full extent of any diminution in value of the Prepetition  
11 Collateral, and only to the extent of the validity, priority, and enforceability of GLR’s prepetition  
12 lien in the Prepetition Collateral, a perfected replacement security interest in and lien upon the  
13 Prepetition Collateral and all proceeds thereof, whether existing on the Petition Date or thereafter  
14 acquired. For the avoidance of doubt, in accordance with paragraph 24 of this [Final](#) Order, the  
15 Junior Adequate Protection Liens granted herein shall not attach to avoidance claims of the estate  
16 or proceeds thereof. The Junior Adequate Protection Liens shall be junior only to the Permitted  
17 Liens, the Carve-Out, and the Senior Adequate Protection Liens.

18 22. [Adequate Protection for the Use of Cash Collateral – Superpriority Claim](#). To the  
19 extent the Post-Petition Collateral granted to UBS AG, London Branch herein does not provide  
20 adequate protection of its interests in the Cash Collateral, the Adequate Protection Obligations  
21 shall constitute a super-priority administrative expense claim under Section 507(b) of the  
22 Bankruptcy Code (“[Adequate Protection Superpriority Claim](#)”). The Adequate Protection  
23 Superpriority Claim shall have priority over all administrative expenses of any kind or any  
24 subsequently filed bankruptcy case under any Chapter of the Bankruptcy Code in any court of  
25

1 competent jurisdiction, including such administrative expenses of the kinds specified in, or  
2 allowable under, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), or 507(b) of the Bankruptcy  
3 Code, subject only to the Financing Superpriority Claim and the Carve-Out. Additionally, no: (i)  
4 costs or expenses of administration which have been or may be incurred (a) in the Chapter 11  
5 Case; (b) after conversion of the Chapter 11 Case to a case proceeding under Chapter 7 of the  
6 Bankruptcy Code, or (c) in any other proceeding related hereto; and/or (ii) priority claims as  
7 defined in Section 507(a) of the Bankruptcy Code are, or will be, senior to or *pari passu* with the  
8 Adequate Protection Superpriority Claim other than the Financing Superpriority Claim and the  
9 Carve-Out. For the avoidance of doubt, in accordance with paragraph 24 of this [Final](#) Order, the  
10 Adequate Protection Superpriority Claims granted herein shall not attach to avoidance claims of  
11 the estate or proceeds thereof.  
12

13  
14 23. Perfection of Adequate Protection Liens. This [Final](#) Order shall be deemed to  
15 grant and perfect, and be sufficient and conclusive evidence of the validity, perfection and  
16 priority of the Adequate Protection Liens as of the Petition Date. UBS AG, London Branch may,  
17 but shall not be required, to file or record financing statements, mortgages, notices of lien, or  
18 similar instruments in any jurisdiction or take any other action in order to validate and perfect the  
19 Adequate Protection Liens granted to them pursuant to this [Final](#) Order, and the stay imposed  
20 under section 362 of the Bankruptcy Code is hereby modified solely to permit the same. If UBS  
21 AG, London Branch shall, in its sole discretion, choose to file such financing statements,  
22 mortgages, notices of lien or similar instruments or otherwise confirm perfection of and the  
23 Adequate Protection Liens, the Adequate Protection Liens granted herein shall be deemed  
24 perfected at the time and on the date of entry of this [Final](#) Order. Upon request by UBS AG,  
25 London Branch, the Trustee is authorized, without the further consent of any party, to take any  
26 actions and to execute and deliver such instruments as may be necessary to enable UBS AG,  
27  
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1 London Branch to further perfect, preserve and enforce the Adequate Protection Liens granted to  
2 UBS AG, London Branch by this [Final](#) Order.

3 24. The Adequate Protection Liens granted by this [Final](#) Order and the Adequate  
4 Protection Superpriority Claim granted by this [Final](#) Order shall not attach to avoidance claims of  
5 the estate or proceeds thereof. For the avoidance of doubt, nothing in this [Final](#) Order shall  
6 prevent UBS from asserting claims against or participating in such claims or proceeds under any  
7 other basis, including with respect to the Financing Liens. Without limiting the foregoing, this  
8 provision shall not be retroactive, such that nothing in the [Final](#) Order shall alter or change the  
9 status of, or impose any limitation or agreement on, any lien or claim against such avoidance  
10 actions of proceeds thereof with regard to use of Prepetition Collateral or Cash Collateral granted  
11 by any order entered in this case prior to the date hereof. Nothing herein shall impair or modify  
12 UBS AG, London Branch's rights to seek additional adequate protection pursuant to section  
13 507(b) of the Bankruptcy Code in the event that the adequate protection provided to UBS AG,  
14 London Branch hereunder is insufficient to compensate for any diminution in value of its interests  
15 in the Cash Collateral or any other Prepetition Collateral during this case or any successor case.  
16

17 25. Termination of Cash Collateral Use. On the Termination Date, the Trustee's right  
18 to use the Cash Collateral on the terms and conditions set forth in this [Final](#) Order shall terminate  
19 automatically. By written agreement, UBS AG, London Branch may agree to waive such  
20 termination in full or permit only limited use of Cash Collateral in any manner following such  
21 event.  
22

23 26. Budget Amendments. UBS may, but is not required to, by written agreement,  
24 amend the Budget, including to, among other things, extend the date through which Cash  
25 Collateral may be used and to increase the amount of Cash Collateral that may be used  
26  
27



1 thereunder; *provided, however*, that any amendment to the Budget made pursuant to the authority  
2 set forth in this [Final](#) Order shall be subject to the following conditions and limitations:

3 (a) any such amendment shall not alter the nature and types of payments that were  
4 authorized under this [Final](#) Order; and

5 (b) any such amendment shall require the consent of the Trustee.

6 The foregoing conditions and limitations are intended to apply only to consensual changes to the  
7 Budget that are made pursuant to the authority of this [Final](#) Order.

8  
9 27. Upon entry of a written amendment in compliance with the foregoing, the new  
10 agreed budget shall constitute the Budget for all purposes under this [Final](#) Order and the Credit  
11 Agreement.

12 28. Promptly following the amendment of the Budget in accordance with the  
13 foregoing, the Trustee shall promptly file notice with this Court, and provide notice of such entry  
14 to all parties entitled to notice.

15  
16 29. Reservation of Rights. The right of the Trustee to seek additional or different use  
17 of Cash Collateral is specifically preserved, *provided that* upon filing of any such request, UBS  
18 AG, London Branch may by written notice terminate authorization to use Cash Collateral  
19 pursuant to this [Final](#) Order, or may agree to permit only use of Cash Collateral in any limited  
20 manner following such event; *provided, however*, any action seeking additional or different use of  
21 Cash Collateral without the express written consent of UBS shall immediately result in the  
22 occurrence of the Termination Date.

23  
24 30. Remedies on Event of Default. If an Event of Default occurs, UBS AG, Stamford  
25 Branch shall have the right without any notice of further order of the Court to take any and all  
26 actions and pursue all remedies permitted under the Credit Agreement and applicable law in  
27 response to such Event of Default, subject to the requirements of paragraph 31 below. UBS AG,



1 Stamford Branch shall have the right to exercise any remedies under the Credit Agreement and  
2 applicable law on five days' notice to the Trustee, the Committee, ~~and~~ the United States Trustee,  
3 [and Santa Barbara](#).

4 31. The automatic stay of section 362(a) of the Bankruptcy Code shall be and hereby  
5 is modified and vacated without further order, notice or application to the Court to the extent  
6 necessary to allow UBS to perform any act authorized by this [Final](#) Order. If an Event of Default  
7 occurs, UBS AG, Stamford Branch shall have the right to seek an order on five days' notice to the  
8 Trustee, the Committee, ~~and~~ the United States Trustee, [and Santa Barbara](#)

10 [32.](#) lifting the automatic stay to permit UBS AG, Stamford Branch to foreclose on the  
11 Collateral or alternatively, compelling the Trustee to sell the Collateral pursuant to section 363(b)  
12 of the Bankruptcy Code. Such motion may be accompanied by an affidavit on behalf of UBS  
13 AG, Stamford Branch stating that an Event of Default has occurred and setting forth the facts of  
14 such Event of Default. Any party opposing the relief requested by UBS AG, Stamford Branch  
15 shall have the burden of proof why the automatic stay should not be lifted with respect to the  
16 Collateral.

18 [33.](#) ~~32.~~ Further Assurances. No further actions shall be required to reflect the  
19 Financing Liens or Adequate Protection Liens granted to UBS or the Obligations or Adequate  
20 Protection Obligations incurred by the Trustee or the Debtor. Notwithstanding the foregoing, the  
21 Trustee and UBS are granted authority to take any such actions and execute any such documents  
22 as they may deem appropriate to reflect the Financing Liens and the Adequate Protection Liens  
23 granted to UBS or the Obligations incurred by the Trustee or the Debtor, including without  
24 limitation execution and delivery of one or more notes, deeds of trust, financing agreements and  
25 all other actions as UBS may reasonably request.

1           34.   ~~33.~~ Section 506(c) Waiver. All rights of the Debtor, the Trustee, and the estate to  
2 surcharge the collateral of UBS are hereby waived for rights accruing during the period that the  
3 Trustee receives advances or is authorized to use Cash Collateral pursuant to this Final Order or  
4 the Credit Agreement, provided that, as consideration for such waiver, the Trustee shall be  
5 authorized to obtain advances and use Cash Collateral for expenses in the Budget prior to any  
6 Event of Default or Termination Date, and further provided that the waiver shall apply whether or  
7 not the Trustee actually uses such advance or Cash Collateral for a specific expense set forth in  
8 the Budget or uses them for another purpose so long as such funds are actually disbursed by the  
9 Trustee.  
10

11           35.   ~~34.~~ Right to Credit Bid. UBS shall have the right to credit bid up to the full  
12 amount of its outstanding Obligations and Prepetition Obligations in connection with any sale of  
13 the Debtor's assets, the Prepetition Collateral, the Post-Petition Collateral or the Collateral under  
14 section 363 of the Bankruptcy Code. If UBS transfers all or any portion of its claims, the right of  
15 the transferee to credit bid shall remain subject to a challenge "for cause" under section 363(k) of  
16 the Bankruptcy Code solely based upon the transfer, the actions of the transferee, or events  
17 arising after such transfer. All defenses to any such challenge to the credit bid rights of a  
18 transferee are preserved. Nothing herein shall constitute consent by UBS to any sale of such  
19 assets, Prepetition Collateral, the Post-Petition Collateral or the Collateral.  
20

21           36.   ~~35.~~ Successors and Assigns. The provisions of this Final Order shall be binding  
22 upon UBS, the Debtor, the Trustee and their respective successors and assigns (including any  
23 other trustee hereinafter appointed or elected for the Debtor's estate) and inure to the benefit of  
24 UBS, the Trustee and the Debtor and their respective successors and assigns.  
25

26           37.   ~~36.~~ Compliance with Laws. Nothing in this Final Order or the Budget shall permit  
27 the Debtor or the Trustee to violate 28 U.S.C. § 959(b), and nothing in this Final Order or the  
28

Budget shall in any way diminish the obligation of any entity, including the Debtor and the Trustee, to comply with environmental laws.

38. ~~37.~~ Priority. Except as set forth herein with respect to the Financing Liens, nothing in this Final Order shall determine or effect the relative priority of any senior prepetition lien or post-petition lien, and all rights are expressly reserved in that regard. All rights are expressly reserved with respect to whether any asset is cash collateral for any entity other than UBS and thus any entitlement of such other entities to adequate protection, including without limitation any superpriority claim.

39. ~~38.~~ Effect of Final Order. If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay, shall not affect (i) the validity of any Adequate Protection Obligations incurred before the actual receipt of written notice by UBS AG, London Branch of the effective date of such reversal, modification, vacatur or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby. Notwithstanding any such reversal, modification, vacatur or stay, any use of the Facility proceeds or Cash Collateral or Obligations or Adequate Protection Obligations incurred by Debtor or the Trustee to UBS before the actual receipt of written notice by UBS of the effective date of such reversal, modification, vacatur or stay, shall be governed in all respects by the original provisions of this Final Order, and UBS shall be entitled to all the rights, remedies, privileges and benefits granted in section 363(m) of the Bankruptcy Code and this Final Order with respect to all uses of the Facility proceeds or Cash Collateral and the Obligations or Adequate Protection Obligations.

40. ~~39.~~ Except as expressly provided in this Final Order, the Financing Liens, the Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of UBS granted by the provisions of this Final Order

1 shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order  
2 converting the case to a case under chapter 7, dismissing of the case, or by any other act or  
3 omission or (ii) the entry of an order confirming a plan in the case. The terms and provisions of  
4 this [Final](#) Order shall continue in this case, or in any superseding chapter 7 case under the  
5 Bankruptcy Code, and the Financing Liens, the Superpriority Claims, the Adequate Protection  
6 Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of UBS  
7 granted by the provisions of this [Final](#) Order shall continue in full force and effect until the  
8 Obligations and the Adequate Protection Obligations are indefeasibly paid in full.

10 [41.](#) ~~40.~~ Findings of Fact and Conclusions of Law. This [Final](#) Order shall constitute  
11 findings of fact and conclusions of law of the Court and shall take effect immediately upon  
12 execution hereof.

13 [42.](#) ~~41.~~ Filing. This [Final](#) Order may be filed in any state or local jurisdiction in order  
14 to evidence and perfect UBS's liens and security interests, as granted and confirmed herein. At  
15 the request of UBS's counsel, the clerk of court shall issue a certified copy of this [Final](#) Order and  
16 shall execute such other certificates or affidavits of authenticity as may be reasonably necessary  
17 to put this [Final](#) Order in a form that may be accepted by the applicable filing office.

19 [43.](#) ~~42.~~ Business Judgment and Good Faith Pursuant to Section 364(e) of the  
20 Bankruptcy Code. The terms of the Facility, Credit Agreement, and this [Final](#) Order were  
21 negotiated in good faith and at arms' length among the Trustee and UBS. Financing provided  
22 under the Facility and the Credit Agreement shall be deemed to have been extended in good faith  
23 and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy  
24 Code.

26 [44.](#) ~~43.~~ Stipulations. Effective upon the expiration of the Challenge Period (as defined  
27 below), the Trustee will be deemed to have admitted, acknowledged, agreed and stipulated that:

(i) the amount due to UBS under the Prepetition Credit Agreements, as of June 30, 2019, is approximately \$127 million, plus such allowable interest, fees and charges as may accrue thereafter; (ii) the Prepetition Obligations constitute legal, valid, enforceable and binding obligations of the Debtor; (iii) no offsets, defenses or counterclaims to the Prepetition Obligations exist; (iv) no portion of the Prepetition Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (v) the Prepetition Credit Agreements are valid and enforceable by UBS AG, London Branch against the Debtor; (vi) the liens and security interests in the Prepetition Collateral securing the Prepetition Obligations (the “Prepetition Liens”) were perfected as of the Petition Date and constitute legal, valid, binding, enforceable and perfected liens in and to the Prepetition Collateral and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and such liens had priority over any and all other liens on the Prepetition Collateral, subject only to certain liens expressly permitted by the Prepetition Credit Agreements (to the extent any such permitted liens were legal, valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date or thereafter pursuant to section 546(b) of the Bankruptcy Code); (vii) the Prepetition Obligations constitute allowed secured claims against the Debtor’s estate to the extent of the Collateral; and (viii) the Debtor and its estate have no claim, objection, challenge or cause of action against UBS or any of its affiliates, parents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), in connection with any of the Prepetition Credit

1 Agreements (or the transactions contemplated thereunder), the Prepetition Obligations or the  
2 Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery.

3 45. ~~44.~~ Effect of Stipulations on Third Parties. The stipulations, admissions,  
4 agreements and releases contained in this Final Order shall be binding upon all other parties in  
5 interest, including, without limitation, any statutory or non-statutory committees appointed or  
6 formed in this case, and any other person or entity acting or seeking to act on behalf of the  
7 Debtor's estates, including the Trustee in all circumstances and for all purposes unless: (a) any  
8 party in interest (subject in all respects to any agreement or applicable law that may limit or affect  
9 such entity's right or ability to do so), in each case, with requisite standing granted by the Court  
10 or, in the case of the Committee, upon the filing of a motion seeking such standing, has timely  
11 and properly filed an adversary proceeding, contested matter, or as to the Committee, motion  
12 seeking standing (subject to the limitations contained herein) by no later than a date that is the  
13 later of (i) January 13, 2020; (ii) any later date agreed to by UBS AG, London Branch in writing  
14 in its sole discretion; and (iii) any such later date ordered by the Court for good cause shown after  
15 notice and an opportunity to be heard, *provided that* the motion seeking such relief is filed before  
16 the expiration of any applicable period as set forth in clauses (i)–(iii) of this sentence (the  
17 “Challenge Period”), (A) objecting to or challenging the validity, perfection, enforceability,  
18 priority or extent of the Prepetition Obligations, or (B) otherwise asserting or prosecuting any  
19 action for preferences, fraudulent transfers or conveyances, other avoidance power claims through  
20 or on behalf of the Debtor's estate against UBS AG, London Branch (collectively, the “Challenge  
21 Proceeding”); and (b) there is a final non-appealable order in favor of the plaintiff sustaining any  
22 such Challenge Proceeding; *provided, however*, that any pleadings filed in connection with any  
23 Challenge Proceeding shall set forth with specificity the basis for such challenge or claim and any  
24 challenges or claims not so specified prior to the expiration of the Challenge Period shall be  
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26  
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1 deemed forever, waived, released and barred. If any such Challenge Proceeding is timely filed  
2 during the Challenge Period, such filing shall immediately result in the occurrence of the  
3 Termination Date.

4 46. ~~45.~~ If no such Challenge Proceeding is timely and properly filed during the  
5 Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding: (i)  
6 any and all Challenge Proceedings or potential Challenge Proceedings shall be deemed to be  
7 forever waived and barred; (ii) all stipulations, admissions, agreements and releases contained in  
8 this Final Order shall be irrevocably and forever binding on all parties in interest; (iii) the  
9 Prepetition Liens shall be deemed to constitute valid, binding, and enforceable encumbrances, and  
10 not subject to avoidance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and  
11 (iv) the Debtor shall be deemed to have released, waived and discharged UBS AG, London  
12 Branch from any and all obligations and liabilities to the Debtor and from any and all claims,  
13 counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising  
14 prior to the Petition Date.

15 47. ~~46.~~ If any such Challenge Proceeding is timely filed during the Challenge Period,  
16 the stipulations, admissions, agreements and releases contained in this Final Order shall  
17 nonetheless remain binding and preclusive on all persons and entities, except to the extent that  
18 such stipulations, admissions, agreements and releases were expressly and successfully  
19 challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of  
20 competent jurisdiction. UBS AG, London Branch reserves all of its rights to contest on any  
21 grounds any Challenge Proceeding. Nothing in this Final Order vests or confers on any Person  
22 (as defined in the Bankruptcy Code), including any statutory or non-statutory committees  
23 appointed or formed in this case, standing or authority to pursue any claim or cause of action  
24 belonging to the Debtor or its estates.





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**COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**Agreed as to form only, and shall not indicate that this [Final](#) Order satisfies condition under the Credit Agreement nor that the condition is waived:**

**O'MELVENY & MYERS LLP**

By: /s/  
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**ATTORNEYS FOR UBS AG, LONDON BRANCH AND UBS AG, STAMFORD BRANCH**

<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.8.0.80 Document comparison done on</b> <b>11/20/2019 1:45:56 PM</b>	
<b>Style name:</b> OMM Standard	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> dm://OMM_US/77302719/1	
<b>Modified DMS:</b> dm://OMM_US/77302719/2	
<b>Changes:</b>	
<u>Add</u>	122
<del>Delete</del>	40
<del>Move From</del>	1
<u>Move To</u>	1
<u>Table Insert</u>	1
<del>Table Delete</del>	1
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	166